

PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : McKirchy, Karen A.
SERIAL NO : 10/075,730
FILED : February 14, 2002
TITLE : METHOD AND APPARATUS FOR PROVIDING INSTRUCTIONAL
HELP AT MULTIPLE LEVELS OF SOPHISTICATION IN A
LEARNING APPLICATION
Grp./A.U. : 2173
Examiner : Vu, Kieu D.
Conf. No. : 2691
Docket No. : P02293US02

DECLARATION OF PRIOR INVENTION IN THE UNITED STATES OR IN A NAFTA

OR WTO MEMBER COUNTRY TO OVERCOME CITED PATENT OR

PUBLICATION

(37 CFR 1.131)

AND TO PRESENT EVIDENCE OF SECONDARY INDICIA OF NON-OBVIOUSNESS

(37 CFR 1.132)

I, Karen A. McKirchy, declare:

A. PURPOSE OF DECLARATION

1. This declaration is to (a) establish completion of the invention in this application in the United States, at a date prior to May 22, 1996, that is the effective date of Cook et al. U.S. Patent 5,727,950, that has been cited by the Examiner in the Office Action of January 13, 2005, and (b) present evidence of secondary indicia of non-obviousness.
2. The person making this Declaration is the inventor, Karen A. McKirchy.

B. FACTS AND DOCUMENTARY EVIDENCE

3. To establish the date of completion of the invention of this application, the following attached documents are submitted as evidence:

Exhibit A: Declaration of Karen McKirchy, of record in grand-parent application U.S. Ser. No. 08/740,256 (filed with the USPTO by certificate of mailing on June 12, 1998) (4 pages) (and incorporated by reference herein).

Exhibit B: Copy of U.S. Copyright Registration TX-4-404-689, with copy of deposit (3 pages).

Exhibit C: Copy of U.S. Copyright Registration TX-4-428-886 (2 pages).

4. From these documents, it can be seen that the invention in this application was made at least by the date of May 22, 1996, which is a date earlier than the effective date of the reference.
5. Specifically, the documents of Exhibits A-C show the following concepts from the claims of the application:
 - (a) A model of the two-levels of sophistication learning method was created at least as early as 1995 and was presented in tangible form in January of 1995, both earlier than May 22, 1996 (See, e.g., Exh. A, page 2, ¶ 9 and Exh. B—which is a copyright of a tangible expression of the model and lists a 1995 creation date). Note that page 3 of Exh. B, the deposit to the U.S. Copyright Office specifically shows how information can be presented to the user in either "Huh or Plain" context (one level of sophistication) or in "Tell me more of Enhance" (a second level of sophistication).
 - (b) An actual implementation of the information model of Exhibit A was published on October 26, 1995, earlier than May 22, 1996 (See, e.g., Exh.

C, a copyright registration of a CD-ROM database used in learning applications and listing a 1995 creation date and an October 26, 1995 publication date).

C. DILIGENCE

6. From the time of conception, to a time just prior to the date of the reference, applicant diligently moved towards a prototype and filing of applicant's application identified in the caption of this declaration.
7. Exhibit A is a copy of a declaration of Karen A. McKirchy filed with the USPTO in 1998, but verifying events prior thereto, including an itemized listed of activities to move the conception of the invention, discussed above, to both an actual and construction reduction to practice.
8. In particular, Exhibit A, ¶¶ 8-9 discuss the conception of the invention, and ¶¶ 10-26 outline actions taken thereafter to develop and implement the concept, culminating in the shipment of a product with the invention reduced to actual practice on October 26, 1995; that is including a version of the two level of sophistication learning assistance illustrated in the information model of Exhibit B.
9. The invention was licensed to the U.S. Army for use in 65,000 (sixty-five thousand) CD-ROMs for seven of the largest Federal Agencies.
10. Thereafter my invention has been licensed for use in eight "Desk References" (web site based) to the Federal Government in a project supported by eleven U.S. Government Agencies.

11. The "Desk References" and associated sites are used as e-learning, performance support, and knowledge management by the Federal Government and its contractors and grantees.
12. The "Desk References" and associated web sites currently average 3,000,000 (three million) hits per year relative to licensed persons accessing and using the invention.

D. TIME OF PRESENTATION OF THE DECLARATION

13. This declaration is submitted prior to final rejection.

E. DECLARATION

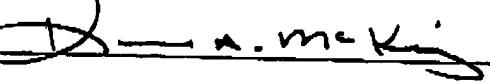
14. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

F. SIGNATURE

15.

Inventor

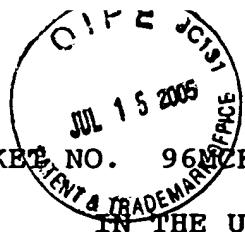
Full name of first inventor Karen A. McKirchy

Inventor's Signature 

Date 07/13/2006

Attachments to Declaration: Exhibits A-C

DOCKET NO. 96MCK001



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Karen A. McKirchy GROUP NO: 2773
SERIAL NO: 08/740,256 EXAMINER: Huynh-Ba
FILED: October 25, 1996
TITLE: METHOD AND APPARATUS FOR PROVIDING INSTRUCTIONAL
HELP, AT MULTIPLE LEVELS OF SOPHISTICATION, IN A
LEARNING APPLICATION



DECLARATION OF KAREN A. MCKIRCHY

Assistant Commissioner For Patents
Washington, D.C. 20231

I, Karen A. McKirchy of 550 23rd Street, #6, Bettendorf, Iowa 52722, declare:

1. I am the applicant of the above-identified patent application and executed the declaration that was filed with this patent application.
2. I am personally familiar and have personal knowledge of the facts and circumstances surrounding the development of the invention disclosed and claimed in the patent application.
3. For 22 years, I have been involved with human resources and training. Since 1988, I have also been involved with and gained experience with multimedia computer products. I have given seminar presentations on the topic.
4. I am president and operate a company that is in the business of a variety of things, including development and production of electronic learning products. I am the President of the company, which is McKirchy & Co., Inc. of Bettendorf, Iowa.
5. For some time prior to late 1994, I had been active in the area of computerized multimedia. I had informal contact with others in the field of endeavor and exchanged general information about the computerized multimedia area. Some of these contacts included certain persons in the Army

===== CERTIFICATION UNDER 37 CFR 1.8(a) and 1.10

I hereby certify that, on the date shown below, this correspondence is being:

MAILING

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37 CFR 1.8(a)

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FACSIMILE TRANSMISSION

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Date: 6/12/98

Wanda R. Webb *Mark D. Hanning*
Wanda R. Webb MARK D. HANNING

Engineering College at Rock Island, Illinois. Rock Island, Illinois is a part of the same metropolitan area as Bettendorf, Iowa. Some of the informal exchanges of information were at the Army Engineering College; some were at my offices at McKirchy & Co.

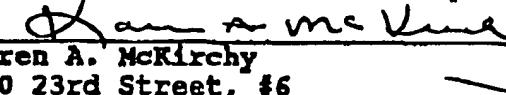
6. In late 1994 and very early 1995, I was at the AMEC Multimedia lab, an experimental lab of the U.S. Army Management Engineering College, Rock Island, Illinois, and shown some early experimental work on an experimental instructional program that presented textual information for a user to learn on a computer. There was discussion of using a voice to narrate the text to the user.
7. The experimental instructional program related to teaching government employees what is called activity based costing.
8. I was intrigued by the concept I had been shown at AMEC. At my office I began to think of better ways to present instruction to a learner in multimedia settings that have the capability of audio, video, graphics, etc. After that a development of the invention of my pending patent application occurred.
9. On or about January 11 or 12, 1995, I was at AMEC. A diagrammatic representation of the AMEC instructional program was on a white board. I mentioned that I had been developing the idea for a supplemental way to assist learning in such a program and added, in diagrammatic form, my idea to the white board drawing.
10. On January 24, 1995, McKirchy & Co. entered into a consulting contract with the AMEC Multimedia Lab to assist in the development of a CD-ROM based on the early experimental instructional program. McKirchy & Co. was hired to handle the content of an instructional program experimental mock up. The mock up was to have one topic of instruction. The contract number was DAAA-0895-M-1353.
11. An early crude mock up of a proposed product was put together about February 1, 1995. The mock up included the prior concept of narrated text for the experimental instructional program, and for a rough form of my experimental learning assistance invention. Its purpose was to provide a very crude example as a way of demonstrating the potential idea to see if funding of further research and development for such a project could be obtained. It was displayed at a conference limited to government employees who would use the instructional program in order to get feedback from potential users whether training and instruction of this type appeared to make sense. The mock up was not in CD form. Rather it primarily consisted of mock ups of opening screens with crude graphics and one topic of instruction.
12. In March 1995, McKirchy & Co. developed and began testing a computer program which processed information into a form that better produced the learning assistance information to be used with the experimental instructional program that was to include my invention of my patent application. This

additional program was conceived by me and is proprietary to my company and enhances the ability to create and develop the experimental instructional program and the learning assistance invention.

13. Prototypes and rough experimental versions of the instructional program were worked on at the lab. Prototypes and rough experimental versions of my computer program were worked on at my office.
14. McKirchy & Co. entered into a contract to develop the content for more topics on March 30, 1995. This contract number was DAAA-08-97-M-2201.
15. McKirchy & Co. entered into a third contract on May 26, 1995 for additional support work for audio and video and other miscellaneous tasks for this same experimental instructional program. This contract was DAAA-08-95-M-3024.
16. I worked with the lab on refinements to my invention and to the overall product through the summer of 1995.
17. The only persons working in the lab on this project along with me were Walt Lilius, project manager, and Larry Rose, an assistant.
18. In July 1995, it was decided that testing was needed with actual potential trainees to see if the idea had any validity.
19. On or about August 2, 1995, one hundred-fifty CD-ROM's were pressed with a prototype of the experimental instructional program with my invention included for the purpose of testing.
20. The test sites were government agencies GSA, DHHS and FAI. It was also reviewed at Rocky Mountain BankCard Systems, the contractor whose product was discussed in the training.
21. Not all of the one hundred fifty CD-ROMs were distributed. All CD-ROMs were logged and returned to the lab.
22. The lab kept feed-back from the test site users. Originally, the feed-back was in the form of e-mails, faxes and phone calls to the lab with the test site users' comments.
23. I was given summaries of the feed-back of the testing. I also participated in discussing the feed-back and making decisions as to what changes should be made to the instructional program and to my learning assistance invention and what feed-back should be acted upon.
24. This round of testing was completed by mid-August, 1995 and changes were implemented. Results were recorded and reviewed by the lab and myself.
25. Further testing inside the lab occurred until it was decided to put the product into the field where continued user testing would occur on a deployed product.
26. On October 26, 1995, the initial order of CDs was shipped to GSA from the AMEC Multimedia lab for distribution to its customer service centers. The customer service centers would

then distribute that product to the end user in the Government, which occurred when GSA would make the CDs available for purchase through the GSA catalogs. It was sometime in November 1995 or early December 1995 at the earliest before the first distribution occurred from any of the customer service centers.

27. While this distribution was occurring, work began on another product. I entered into other contracts to create the instructional content of this product. This product utilized my invention.
28. The second product went into Beta testing, feedback was received and changes were made, and it was distributed inside the Government in March, 1996. It contained a bug and was redistributed in May 1996.
29. A third product was distributed inside the Government in August 1996. This product was a customization of the first product and utilized my invention.
30. The Government has recognized my intellectual property as not part of contract requirement or contract performance and has licensed it and the proprietary software program of McKirchy & Co. in contract number DAAA0897MO456.
31. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.


Karen A. McKirchy
530 23rd Street, #6
Bettendorf, Iowa 52722

CERTIFICATE OF REGISTRATION



OFFICIAL SEAL

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

FORM TX

or a Literary Work

UNITED STATES COPYRIGHT OFFICE

TX 4-404-689

070004404689

EFFECTIVE DATE OF REGISTRATION

DEC 23 1986

Month

Day

Year

REGISTER OF COPYRIGHTS

United States of America

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK ▼

Information Model

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼	Number ▼	Issue Date ▼	On Pages ▼
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NAME OF AUTHOR ▼

2 a McKirchy & Company, Inc.

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?

 Yes No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR { Citizen of ▶

Domiciled in ▶ United States

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? Yes No
Pseudonymous? Yes No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

Combination of "Huh or Plain" and "Tell Me More or Enhance" as part of an

NAME OF AUTHOR ▼ - information model used to construct a DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?

 Yes No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR { Citizen of ▶

Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

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NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

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Name of Country

OR { Citizen of ▶

Domiciled in ▶

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Pseudonymous? Yes No

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NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

3 a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

1995

This information must be given in all cases.

b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK
Complete this information ONLY if this work has been published.
Month ▶ October Day ▶ 26 Year ▶ 1995
United States of America

◀ Nation

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

McKirchy & Company, Inc.

2535 Tech Drive, Suite 104

Bettendorf, Iowa 52722-0825

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

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EXH-B

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Page 1 of _____ pages

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Yes No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼

This is the first published edition of a work previously registered in unpublished form.

This is the first application submitted by this author as copyright claimant.

This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give Previous Registration Number ▼

Year of Registration ▼

5

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

6

Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

All copyrightable elements not defined in the Nature of Authorship section.

See instructions
before completing
this space.

7

REPRODUCTION FOR USE OF BLIND OR PHYSICALLY HANDICAPPED INDIVIDUALS A signature on this form at space 10 and a check in one of the boxes here in space 8 constitutes a non-exclusive grant of permission to the Library of Congress to reproduce and distribute solely for the blind and physically handicapped and under the conditions and limitations prescribed by the regulations of the Copyright Office: (1) copies of the work identified in space 1 of this application in Braille (or similar tactile symbols); or (2) phonorecords embodying a fixation of a reading of that work; or (3) both.

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DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.
Name ▼ Account Number ▼

9

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

Mark D. Hansing, Esq.

Zarley, McKee, Thomte, Voorhees & Sease.

801 Grand Ave., Suite 3200

Des Moines, Ia. 50309

Area Code and Telephone Number ▶ 515-288-3667

Be sure to
give your
daytime phone
number

10

CERTIFICATION I, the undersigned, hereby certify that I am the

Check only one ▶

- author
 other copyright claimant
 owner of exclusive right(s)
 authorized agent of McKirchy & Company, Inc.

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Date ▶ 12/20/96

Mark D. Hansing

Handwritten signature QO ▼



MAIL
CERTIFI-
CATE TO

Name ▼

Mark D. Hansing, Esq.

Number/Street/Apartment Number ▼

Zarley, McKee, Thomte, Voorhees & Sease
801 Grand Ave., Suite 3200

City/State/ZIP ▼

Des Moines, Iowa 50309-2721

YOU MUST:

- Complete all necessary spaces
- Sign your application in space 10

SEND ALL 3 ELEMENTS
IN THE SAME PACKAGE:

1. Application form
2. Nonrefundable \$20 filing fee
in check or money order
payable to Register of Copyrights
3. Deposit material

E-MAIL TO:

Register of Copyrights
Library of Congress
Washington, D.C. 20559 6000

11
The Copyright Office
has the authority to ad-
just fees at 5-year inter-
vals, based on changes
in the Consumer Price
Index. The next adjust-
ment is due in 1996.
Please contact the
Copyright Office after
July 1995 to determine
the actual fee schedule.

17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

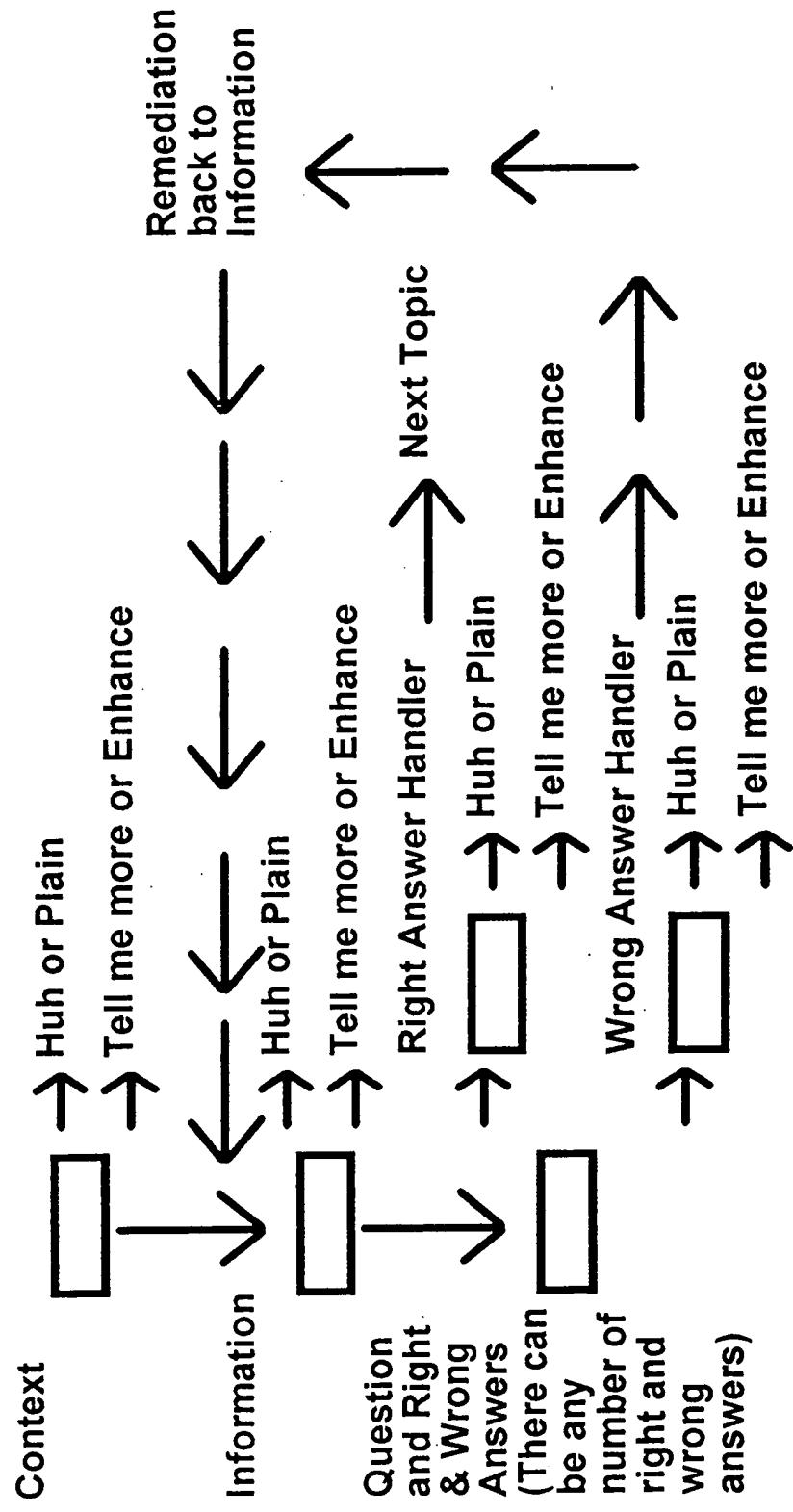
JULY 1993-40,000

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U.S. GOVERNMENT PRINTING OFFICE: 1993-342-582/60.020

Information Model

Topic Module



CERTIFICATE OF REGISTRATION



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FORM TX

For a Literary Work
UNITED STATES COPYRIGHT OFFICE

REG



TX 4-428-886

EFFECTIVE DATE OF REG

3 7 1997
Month Day Year

REGISTER OF COPYRIGHTS
United States of America

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1 TITLE OF THIS WORK ▼

Governmentwide Purchase Card CD-Rom Database
PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼	Number ▼	Issue Date ▼	On Pages ▼
---	----------	--------------	------------

2 NAME OF AUTHOR ▼

a McKirchy & Company, Inc.

Was this contribution to the work a "work made for hire"?

Yes

No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR Citizen of ▶

Domiciled in ▶ United States

DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? Yes No

Pseudonymous? Yes No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼
Entire database including text

NAME OF AUTHOR ▼

b

Was this contribution to the work a "work made for hire"?

Yes

No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR Citizen of ▶

Domiciled in ▶

DATES OF BIRTH AND DEATH

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3 a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

1995 This information must be given even if the year in all cases.

b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

Complete this information Month ▶ October Day ▶ 26 Year ▶ 1006 *1995 Nation ▶ United States of America

4 b COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

McKirchy & Company, Inc.
2535 Tech Drive, Suite 104
Bettendorf, Iowa 52722-0825

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

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- Complete all applicable spaces (numbers 5-11) on the reverse side of this page.
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08/23/1996

3/7/97

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EXH-C

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1

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Mark Hansing on 1/23/97.

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FORM TX

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Vg

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PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

Yes No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼

5

a. This is the first published edition of a work previously registered in unpublished form.

b. This is the first application submitted by this author as copyright claimant.

c. This is a changed version of the work, as shown by space 6 on this application.

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Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

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b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

*compilation and text

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Name ▼

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CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

Mark D. Hansing,
Zarley, McKee, Thomte, Voorhees & Sease
801 Grand Ave., Suite 3200
Des Moines, Iowa 50309

Area Code and Telephone Number ▶ 515-288-3667

Be sure to
give your
daytime phone
number

CERTIFICATION I, the undersigned, hereby certify that I am the

Check only one ▶

{ author
 other copyright claimant
 owner of exclusive right(s)

of the work identified in this application and that the statements made
by me in this application are correct to the best of my knowledge.

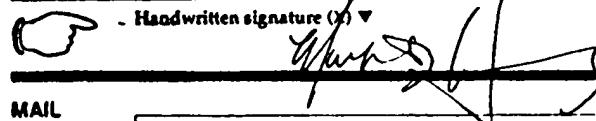
authorized agent of McKirchy & Company, Inc.

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Mark D. Hansing

Date ▶ 1/20/96


Handwritten signature (X) ▼

10

MAIL
CERTIFI-
CATE TO

Name ▼ Mark D. Hansing
Zarley, McKee, Thomte, Voorhees & Sease

YOU MUST:

- Complete all necessary spaces
- Sign your application in space 10

SEND ALL 3 ELEMENTS
IN THE SAME PACKAGE:

1. Application form
2. Nonrefundable \$20 filing fee
in check or money order
payable to Register of Copyrights
3. Deposit material

MAIL TO:

Register of Copyrights
Library of Congress
Washington, D.C. 20559-6000

The Copyright Office
has the authority to ad-
just fees at 5-year inter-
vals, based on changes
in the Consumer Price
Index. The next adjust-
ment is due in 1996.
Please contact the
Copyright Office after
July 1995 to determine
the actual fee schedule.

Certificate
will be
mailed in
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envelope

Number/Street/Apartment Number ▼
801 Grand Ave., Suite 3200
City/State/ZIP ▼
Des Moines, Iowa 50309-2721

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*17 U.S.C. § 506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

JULY 1993-400.000

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